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HAC



CENTRAL INTELLIGENCE AGENCY

Office of Legislative Liaison

Washington, D. C. 20505

Telephone: 351-6121

8 February 1985

OLL 85-0431

TO: Mr. James Van Wagenen
Subcommittee on Defense
Committee on Appropriations
House of Representatives
Washington, D.C. 20515

Dear Jim:

Per your request, please find the
enclosed.



Liaison Division
Office of Legislative Liaison

Enclosure

FORM 3-79 **1533** OBSOLETE
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SUBJECT:

HAC Van Wagenen - Questions on Guns and Funding for Contras

FROM:

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DATE SENT

10 JAN '85
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10-84 4283**Priority Handling****Congressional
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WORLD

CENTRAL AMERICA

Form 163a
8-66

REFERENCE

Trouble with the Law

ATTACHMENT

Nicaragua wins a propaganda victory over the U.S. in the World Court

As fighting between the Sandinista government and the U.S.-inspired *contra* guerrillas sputters along Nicaragua's northern border, skirmishes between Washington and Managua continue to rage on broader battlefields: in newspapers, at fund-raising offices, in college classrooms and along the corridors of Congress. Through legal challenges, diplomatic maneuvers and public relations jabs, Nicaragua's Marxist-led government and the Reagan Administration have been fighting for the hearts and minds of the international diplomatic community. In this not-at-all-secret war of words, the U.S. last week suffered an embarrassing setback. The 16 judges of the World Court, in a series of firm decisions delivered from their imposing headquarters in The Hague, acknowledged Nicaragua's right to bring suit against the U.S. for its support of the *contras* and to seek damages for the guerrillas' activities. The case will still have to be argued, but the court's decision to grant the Sandinistas a hearing ended what some U.S. officials considered to be Washington's last real hope of extricating itself from a potentially damaging public relations morass.

The dispute arose when the U.S.-backed rebels claimed responsibility for mining Nicaragua's harbors last February and March (the mining stopped by April). The Sandinistas lost no time in going before the United Nations Security Council in New York City, introducing a resolution that called for the immediate end to the mining of Nicaraguan ports. The U.S. used its Security Council veto to block the resolution. The Nicaraguans then decided to take their complaint to the World Court, the judicial arm of the U.N. and the highest forum for resolving disputes between nations. When the U.S. learned of Nicaragua's intention, it launched an ill-conceived pre-emptive strike: just three days before Nicaragua filed suit, the U.S. asserted that it would not accept the "compulsory jurisdiction" of the court over any Central American matters for the next two years. Last week the court overwhelmingly rejected Washington's argument that it had no jurisdiction.

The rulings involved nothing more than the court's right to decide the U.S.-

Nicaraguan dispute; the central issue itself is not likely to be resolved any time soon. The Nicaraguans say that their documentation will be ready in three months. At that point, the U.S. has the right, as in any other lawsuit, to respond. But the procedure is an extremely protracted one. First there must be an exchange of written arguments, and then a series of hear-

only American member of the panel, Reagan-appointed Judge Stephen Schwebel.

Having claimed only months ago that they had "an open-and-shut case," State Department lawyers were understandably disappointed by the ruling. They said, however, that the decision marked a setback of tactics rather than strategy in U.S. policy toward Nicaragua and that they

saw no need to amend that policy. They also reasserted that the court should never have been asked to settle what is essentially a political dispute. Said State Department Spokesman Alan Romberg: "We continue to believe that the court is not the proper forum, either as a matter of law or for helping to achieve a peaceful resolution of the conflict in the region." Privately, however, U.S. officials conceded that instead of challenging the court's jurisdiction, they should simply have refused to contest the case.

For their part, the Sandinistas sounded a note of jubilant righteousness. "Today is a historic day, a day of triumph for the cause of peace, a day of hope for humanity," Foreign Minister Miguel d'Escoto Brockmann said in Managua. "If [the U.S. has] any quarrel with us, any justification for their illegal and murderous activities, let them bring it to court. Why are they afraid?" Said Paul Reichler, an American attorney who helped represent the Sandinistas in The Hague: "The Reagan Administration has to decide whether the U.S. is for or against international law."

The choice is hardly that simple, but the Administration does face an unpleasant dilemma. If the U.S. decides to defend itself against Nicaragua's charges once arguments begin, it stands a good chance of losing the case, and thus having its efforts to end Nicaraguan subversion in Central America condemned as lawless. Even U.S. State Department officials acknowledge that the unfortunate decision to declare the U.S. exempt from the court's jurisdiction was made after profiles of the 15 elected judges and their views were compiled; they led to the conclusion that the U.S. had little hope of victory.

Some Washington officials believe that the U.S. can win the case only by releasing classified intelligence information

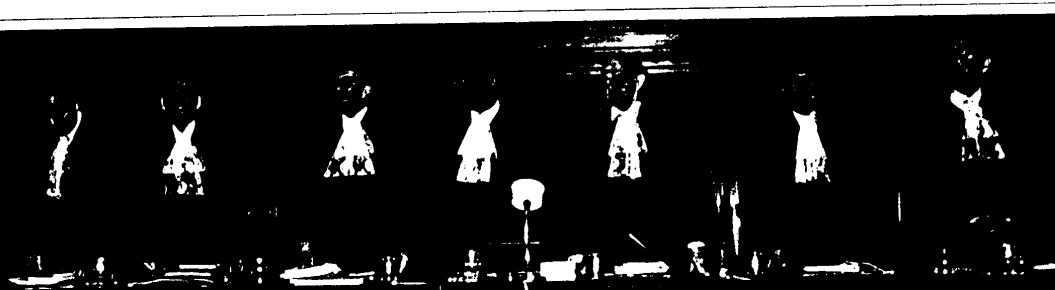


Focus of the case: *contras* on Nicaraguan border

Facing a dilemma over whether to ignore the verdict.

ings. The final verdict is not expected before the end of 1985. Moreover, the World Court has no power to enforce its rulings.

But last week's decision was nonetheless a clear rebuke to the U.S., a longtime champion of the rule of law, by a court not widely viewed as partisan. Respected jurists from such U.S. allies as Britain, France, West Germany, Italy and Japan found in favor of Nicaragua. The sole dissenting voice on the crucial issue of Nicaragua's standing in the court came from the



Members of the court in an earlier session in The Hague to consider whether they have jurisdiction in the dispute

about Nicaraguan support for leftist guerrillas in El Salvador. Yet such a disclosure could hamper future U.S. intelligence gathering throughout Central America. "If we accept the court's jurisdiction," said a State Department official, "our line of defense will be to take the offensive. We will show that Nicaragua has been aiding and abetting subversion and terror in neighboring countries. Under international law, we have the right to help them undertake offensive action in pursuit of a defensive policy. The problem is proof. Do we surrender our intelligence information? Suppose our proof is a wiretap in the *comandantes'* headquarters in Managua. First of all, you would not divulge such a source, and second, if you did, the *comandantes* would deny the validity of the transcript." Third, he might have added, even those costly disclosures would be no guarantee of victory before the judges.

The other U.S. alternative is to refuse to fight the case and, if Nicaragua wins, simply to ignore the decision. That might lead to an even greater loss of face among the community of nations. Nonetheless, the move would by no means be unprecedented. Over the past 15 years, several nations, including such upstanding international citizens as Iceland, India and France, have refused to submit to the panel's rulings. Yet the most recent example of defiance occurred when Iran ignored a 1980 judgment from the court to pay reparations for seizing the U.S. embassy in Tehran. The U.S. is clearly not eager to follow the Iranian example.

As one of the court's founders and firmest supporters, Washington would also lose much international credibility by withdrawing in the face of defeat. "You cannot be one of the major law-keeping forces in the world and then boycott the first major law court in the world," said Christopher Mitchell-Heggs, a Paris-based international lawyer. "When Iran ignored the jurisdiction, it successfully put itself out of bounds as an international partner. Nobody would treat it seriously, and all its major international agreements lapsed." At the same time, it is not unusual for a government to settle such disputes out of court. Over the coming months, pressure on Washington to step up negotiations with Nicaragua seems certain to increase. Washington's difficult position under-

lined the World Court's limitations. Known officially as the International Court of Justice, the panel was founded in 1945 to deal with disputes between nations and to advise the U.N. on matters of international law. The judges, each from a different country, are paid \$82,000 a year and serve nine-year terms. In practice, however, the court is one of the least productive legal institutions around: in nearly four decades of existence it has reviewed only 49 cases, most of them involving minor issues like boundary disputes and fishing rights. Of the 159 member nations of the U.N., only 47 have accepted the court's compulsory jurisdiction. All but seven of them have provisions in their declarations of support for the court that allow them to ignore the body if it suits them. The U.S., for instance, acknowledges the court's compulsory jurisdiction except in cases that Washington considers to involve "domestic issues."

As the U.S. and Nicaragua respectively assailed and praised the court's decision last week, both countries continued to accuse each other of preparing for outright warfare. The U.S. claimed that it had sighted six Soviet ships laden with arms and bound for Nicaragua. Perhaps chastened by mistaken allegations last month that Soviet MiG-21 fighter planes were being unloaded in the Nicaraguan port of Corinto, the Administration did not commit itself to

specifying what arms the ships were carrying. But President Reagan warned again last week that if sophisticated Soviet aircraft are sent to Central America, "this is something we cannot sit back and just take."

Meanwhile, the Sandinistas' own recent flurry of false alarms about an imminent U.S. invasion was, in a sense, silenced by the World Court. Said one West European observer: "The mood in Managua suddenly switched from one of contrived invasion hysteria that most of the populace chose to ignore to one of quietly triumphant legality."

The ruling from The Hague was the second propaganda setback for the U.S. in its dealings with Nicaragua since September, when the Sandinistas caught Washington off balance by abruptly accepting "in its totality and without modification" the draft of a regional nonaggression treaty. The proposed agreement had been produced by the so-called *Conadadora* countries—Colombia, Panama, Mexico and Venezuela—and the U.S. had supported their deliberations. But Washington still has misgivings about the draft accord, namely about the lack of adequate verification and control mechanisms to ensure Nicaraguan compliance. On the other side of the propaganda ledger, the Sandinistas' well-publicized elections last month impressed few foreign nations as a genuine return to democracy: many opposition groups boycotted the vote, and others complained that they were not allowed to campaign freely.

In a tightening of domestic restrictions, Nicaragua in recent weeks has denied at least 27 prominent opposition figures permission to travel outside the country. In addition, a much touted "national dialogue," in which political parties, church authorities and social groups were to join in thrashing out the nation's problems, began to fall apart when some members of the main opposition group withdrew, charging that the display of pluralism was an empty gesture. "The dialogue is the difference between war and peace," said an opposition member. "Nobody wants to say he's chosen war, but it certainly looks like an impasse." Much the same could be said for the larger struggle between the U.S. and Nicaragua on the wider battlefield of world opinion.

—By Pico Iyer. Reported by Tala Skarl/Paris and William Stewart/Washington



Foreign Minister Miguel d'Escoto Brockmann
"A day of triumph for the cause of peace."

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